IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Crl.L.P..No. 484 of 2007()

ST.49/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT -IV, KOCHI

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PETITIONER/COMPLAINANT :

ICICI BANK LTD,C SI ASSENTION SQUARE
BUILDING, NEAR COLLECTORATE, RAILWAY STATION ROAD,
KOTTAYAM,REP.BABU SREEJITH.

BY ADVS. SRI.KKM.SHERIF
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS ACCUSED & STATE:

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1. MONICHAN A.K, KANICHERIL HOUSE,
THOTTUVATHALA (P.O), KANMAKARRY, ALLEPPEY.

2. STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. C.M. KAMMAPPU

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO.484 OF 2007

Dated this the 19th day of July, 2007

O R D E R

This is a petition for special leave to appeal against the judgment in S.T. No.49 of 2005 on the file of the Judicial First Class Magistrate's Court IV, Kochi. The impugned judgment acquitting the accused was passed under Section 256(1) Cr.P.C.

2. The judgment impugned would show that the case was posted on several occasions for the evidence of the complainant, but the complainant remained absent. Finally, the case was posted on 20.1.2007 on which day also the complainant was absent. Finding that the complainant was continuously absent, it appeared to the court below that the complainant was not interested in prosecuting the matter and hence acquitted the accused.

3. As per the principles laid down by this Court in the decisions reported in **Don Bosco v. Partech Computers Ltd., 2005(2) K.L.T. 1003**

and **G.F.S. Chit & Loans (P) Ltd. v. Rajesh, 2006 (3) K.L.T. 825** and by the Apex Court in the decision reported in **Associated Cement Co. Ltd. Keshvanand, 1998(1) K.L.T. 179 (SC)**, the learned Magistrate shall not acquit an accused under Section 256(1) Cr.P.C. only due to the absence of the complainant. But this Court as well as the Apex Court had clarified that an order under Section 256(1) Cr.P.C. can be passed at a stage where the Magistrate is not in a position to proceed with the case because of the absence of the complainant. In the light of the above principle, this Court is of the view that the trial court was fully justified in acquitting the accused. The impugned judgment, therefore, requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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